IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 98 of 1998()

CC.13/1997 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR
.....

APPELLANT/COMPLAINANT:

GOOD WILL TRADERS, ARAFA BUILDINGS, NEW CHURCH ROAD, THRISSUR-1, A PROPRIETORY CONCERN WHOSE PROPRIETOR IS SUNIL BAVA, AGED 33, RESIDING AT KOORKENCHERY VILLAGE, DESOM, S/O.M.M.SINGH BAVA, TRICHUR TALUK, REP. BY THE POWER OF ATTORNEY HOLDER, P.J.JOHN, AGED 26, S/O.JACOB, PLAGALANGATH HOUSE, NELLIKUNNU DESOM, OLLUKARA VILLAGE, TRICUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS/ACCUSED AND STATE:

1.V.V.VINCENT, AGED ABOUT 40 YEARS,PROPRIETOR, NOBLE TRADERS, KKAM APARTMENTS, NEAR RAILWAY COLONY, EAST NADA, GURUVAYOOR, THRISSUR-680 101, RESIDING AT VADAKKEN HOUSE, THANEPADAM, KANDASSANKADAVU, THRISSUR DISTRICT.

2.STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.98 OF 1998 ()

Dated this the 24th day of January, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments contending that two cheques for Rs.15,000/- each issued by respondents was dishonored due to insufficiency of funds. The accused was acquitted under Section 256(1) of the Code of Criminal Procedure for absence of the complainant on 5.8.1997. Case of the complainant was that the complainant was present in all the previous occasions. Summons was not served on the accused as he was evading it. Therefore warrant was issued. Before execution of the warrant itself accused was acquitted merely for the absence of the complainant on one day. An affidavit Annexure A was filed by his counsel stating that the absence of the complainant was because of mistake in noting the posting date. Even otherwise the accused was not present, it is not necessary for the complainant to be present. Even though Magistrate can acquit the accused for the absence of complainant under Section 256

(1) of Cr.P.C. it should not be done mechanically. If the presence of the complainant is not mandatory, accused cannot be acquitted merely because complainant was absent on a particular day. In the above circumstances, the impugned order is set aside and the matter is remanded. I note that the notice issued by this Court to the accused was not able to be served. However, he has not appeared before the court below also. Therefore fresh steps should be taken by the Magistrate to serve notice. Hence this appeal is allowed by way of remand. The complainant may present before the trial court on 19.3.2007.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.98 OF 1998

JUDGMENT

24th January, 2007